

Message Text

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PAGE 01 COPENH 04852 161453Z

ACTION COME-00

INFO OCT-01 EUR-12 IO-13 ISO-00 AGRE-00 CEA-01 CIAE-00

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INFO AMEMBASSY BRUSSELS

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USMISSION GENEVA

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AMEMBASSY OSLO

AMEMBASSY STOCKHOLM

AMEMBASSY VIENNA

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USEEC

USMTN

E.O.: 11652: N/A

TAGS: ETRD, EFTA, DA

SUBJ: PUBLIC SUPPLY PROCUREMENT IN EFTA

REF : STATE A-3063

1. IN RESPONSE TO REFAIR, EMBASSY CONTACTED MR. AAGE ANDERSEN, OFFICE DIRECTOR, DANISH MINISTRY OF COMMERCE. MR. ANDERSEN WAS ACTIVELY ENGAGED IN THE EFTA WORK ON A PUBLIC PROCUREMENT CODE AND HE IS THE DANISH REPRESENTATIVE IN THE OECD GROUP ON PUBLIC
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PAGE 02 COPENH 04852 161453Z

PROCUREMENT.

2. ANDERSEN'S RESPONSE TO QUESTIONS (A) THROUGH (I) IN PARAGRAPH 4 OF REFAIR WAS AS FOLLOWS:

(A) YES, PRIMARILY BECAUSE OF THE NON-DISCRIMINATION PRINCIPLE. PRIOR TO DRAFTING OF THE EFTA CODE, SOME COUNTRIES, E.G., NOR-

WAY, HAD PROCUREMENT POLICIES INCONSISTENT WITH ARTICLE 14 PROVISIONS.

(B) DANISH PROCUREMENT POLICIES AND PRACTICES WERE NEVER CODIFIED IN WRITING, BUT FOLLOWING THE LISBON AGREEMENT ON INTERPRETATION OF ARTICLE 14, ALL PUBLIC AUTHORITIES, INCLUDING INSTITUTIONS, LOCAL GOVERNMENTS, ETC. WERE ADVISED OF THE LISBON AGREEMENT. ANDERSEN SAID THAT IN ORDER TO COMPLY WITH THE EFTA CODE, LOCAL GOVERNMENTS FREQUENTLY CONTACTED THE MINISTRY OF COMMERCE IN REGARD TO SPECIFICS OF ARTICLE 14.

(C) AND (D) ALTHOUGH THERE IS NO STATISTICAL INFORMATION ON THE PUBLIC PURCHASES SHARE OF TOTAL INTER-EFTA TRADE, ANDERSEN SAID HE WAS SURE THAT THE GROWTH OF INTER-EFTA PUBLIC PURCHASES HAS KEPT PACE WITH THE SIGNIFICANT INCREASE IN THE TOTAL INTER-EFTA TRADE.

(E) THERE WERE NO ESTABLISHED PROCEDURES IN RELATION TO PUBLISHING OF PROSPECTIVE PUBLIC PURCHASES. ACCORDING TO MR. ANDERSEN, FOREIGN SUPPLIERS WERE WELL AWARE OF THE DANISH PUBLICATIONS IN WHICH THE ADS WERE PUBLISHED (IN MOST INSTANCES THE PROFESSIONAL JOURNALS).

(F) FIRST QUESTION: NO INFORMATION ON THE WINNING BID WAS DISCLOSED. THE UNSUCCESSFUL BIDDER COULD CONTACT THE PURCHASING OFFICE TO ASCERTAIN WHY HE WAS NOT AWARDED THE CONTRACT, (I.E., LIMITED OFFICIAL USE

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NOT COMPETITIVE IN PRICE, QUALITY, DELIVERY TIME, ETC.). SECOND QUESTION: MR. ANDERSEN SAID HE WAS UNABLE TO RESPOND DUE TO LACK OF EXPERIENCE WITH SUCH CASES.

(G) ANDERSEN SAID HE DID NOT RECALL ANY EXAMPLES OF DEROGATION FROM THE NON-DISCRIMINATION PRINCIPLE.

(H) RECOURSE ACTION BY FOREIGN SUPPLIERS: (1) CONTACT WITH PURCHASING OFFICE FOR DETAILS ON WHY CONTRACT WAS NOT AWARDED; (2) IF SUPPLIER NOT SATISFIED WITH THIS INFORMATION, BILATERAL TALKS COULD TAKE PLACE (ON MINISTERIAL LEVEL); (3) IF CASE STILL NOT SETTLED, SUPPLIER COUNTRY COULD BRING ISSUE BEFORE THE EFTA TRADE EXPERT COMMITTEE AND/OR THE EFTA COUNCIL. MR. ANDERSEN HAD NO DETAILS ON ACTUAL CASES, BUT HE SAID ONLY A VERY LIMITED NUMBER HAVE BEEN PRESENTED TO THE TRADE EXPERT COMMITTEE.

(I) EFTA COUNTRIES HAVE AGREED THAT CHANGES IN PROCUREMENT POLICIES AND PRACTICES SHOULD BE NOTIFIED TO THE OTHER MEMBER STATES. NOTIFICATION NORMALLY TOOK PLACE IN THE TRADE EXPERT COMMITTEE. THERE WERE NO PROVISIONS CALLING FOR SUBMISSION OF DATA TO A DESIGNATED EFTA OFFICE. THERE WERE NO SPECIFIC PROCEDURES FOR DISPUTE SETTLEMENTS, AND DISCUSSION MOST OFTEN TOOK PLACE IN THE

TRADE EXPERT COMMITTEE IN THE COUNCIL.

COMMENT: THE EFTA PROCUREMENT CODE, ALTHOUGH VERY GENERAL IN ITS NATURE, HAS REPORTEDLY WORKED SATISFACTORILY. THIS CONCLUSION IS BASED UPON THE FACT THAT ONLY A VERY LIMITED NUMBER OF COMPLAINTS ABOUT THE CODE WERE PRESENTED DURING THE PERIOD OF DANISH MEMBERSHIP.

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